

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 GERARDO PILLADO,
12 CDCR #64533,

13 Plaintiff,

14 vs.
15 GEORGE NEOTTI, et al.,

16 Defendants.

17 Civil No. 11-0204 LAB (WMC)

18
19
20
21
22
23
24
25
26
27
28 **ORDER DENYING MOTION TO
PROCEED *IN FORMA PAUPERIS*
AND DISMISSING CASE WITHOUT
PREJUDICE PURSUANT TO
28 U.S.C. § 1915(a)**

[ECF No. 2]

On January 31, 2011, Plaintiff, a state inmate currently incarcerated at Centinela State Prison located in Imperial, California filed this action pursuant to § 1983. In addition, Plaintiff filed a Motion to Proceed *In Forma Pauperis* (“IFP”). However, the Court denied Plaintiff’s Motion to Proceed IFP because he failed to submit a certified copy of his inmate trust fund account statement as required by 28 U.S.C. § 1915(a)(2). *See* Feb. 14, 2011 Order at 2. Plaintiff was granted leave to file a new Motion to Proceed IFP and include a certified copy of his trust account statement. *Id.* On March 14, 2011, Plaintiff filed a new Motion to Proceed IFP but once again, failed to submit a certified copy of his trust account statement [ECF No. 4].

///

1 **I. MOTION TO PROCEED IFP**

2 As stated in the Court's previous Order, all parties instituting any civil action, suit or
 3 proceeding in a district court of the United States, except an application for writ of habeas
 4 corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite
 5 a party's failure to pay only if the party is granted leave to proceed in forma pauperis ("IFP")
 6 pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir.
 7 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). "Under the PLRA [Prison
 8 Litigation Reform Act], all prisoners who file IFP civil actions must pay the full amount of the
 9 filing fee," regardless of whether the action is ultimately dismissed for any reason. *See Taylor*
 10 *v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002) (citing 28 U.S.C. § 1915(b)(1) & (2)).

11 In order to comply with the PLRA, prisoners seeking leave to proceed IFP must also
 12 submit a "certified copy of the trust fund account statement (or institutional equivalent) for the
 13 prisoner for the 6-month period immediately preceding the filing of the complaint...." 28 U.S.C.
 14 § 1915(a)(2). From the certified trust account statement, the Court assesses an initial payment
 15 of 20% of (a) the average monthly deposits in the account for the past six months, or (b) the
 16 average monthly balance in the account for the past six months, whichever is greater, unless the
 17 prisoner has no assets. *See* 28 U.S.C. § 1915(b)(1), (4); *see Taylor*, 281 F.3d at 850. Thereafter,
 18 the institution having custody of the prisoner must collect subsequent payments, assessed at 20%
 19 of the preceding month's income, in any month in which the prisoner's account exceeds \$10, and
 20 forward those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C.
 21 § 1915(b)(2).

22 While Plaintiff has filed a second Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a),
 23 he has not attached a certified copy of his prison trust account statement for the 6-month period
 24 immediately preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL.
 25 CIVLR 3.2. Section 1915(a)(2) clearly mandates that prisoners "seeking to bring a civil action
 26 ...without prepayment of fees ... *shall* submit a certified copy of the trust fund account statement
 27 (or institutional equivalent) ... for the 6-month period immediately preceding the filing of the
 28 complaint." 28 U.S.C. § 1915(a)(2) (emphasis added).

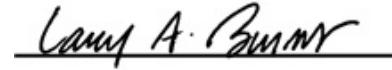
1 Without Plaintiff's trust account statement, the Court is simply unable to assess the
2 appropriate amount of the filing fee which is statutorily required to initiate the prosecution of
3 this action. *See* 28 U.S.C. § 1915(b)(1).

4 **II. CONCLUSION AND ORDER**

5 For the reasons set forth above, **IT IS ORDERED** that:

6 Plaintiff's Motion to Proceed IFP [ECF No. 4] is DENIED and the action is DISMISSED
7 without prejudice for failure to prepay the \$350 filing fee mandated by 28 U.S.C. § 1914(a).

8 DATED: April 26, 2011

9 

10 **HONORABLE LARRY ALAN BURNS**
United States District Judge

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28